

Todd M. Friedman (SBN 216752)  
Meghan E. George (SBN 274525)  
Adrian R. Bacon (SBN 280332)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
21550 Oxnard St., Suite 780  
Woodland Hills, CA 91367  
Phone: 323-306-4234  
Fax: 866-633-0228  
tfriedman@toddflaw.com  
mgeorge@toddflaw.com  
abacon@toddflaw.com  
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND	)	Case No.
PLUMBING, INC., individually and on	)	
behalf of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS OF
	)	THE TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
KYC INSURANCE SERVICES, LLC;	)	§227 ET SEQ.]
DOES 1 through 10, inclusive,	)	2. WILLFUL VIOLATIONS OF THE
	)	TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
Defendant(s).	)	§227 ET SEQ.]
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>

Plaintiff, ABANTE ROOTER AND PLUMBING, INC. ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable

1 remedies resulting from the illegal actions of KY INSURANCE SERVICES,  
2 LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting  
3 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer  
4 Protection Act, 47 *U.S.C.* § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s  
5 privacy.

### 6 **JURISDICTION & VENUE**

7 2. Jurisdiction is proper under 28 *U.S.C.* § 1332(d)(2) because Plaintiff,  
8 a resident of California, seeks relief on behalf of a Class, which will result in at  
9 least one class member belonging to a different state than that of Defendant, a  
10 California company who is no longer authorized to do business in the state of  
11 California. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
12 violation of the TCPA, which, when aggregated among a proposed class in the  
13 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
14 Therefore, both diversity jurisdiction and the damages threshold under the Class  
15 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
16 jurisdiction.

17 3. Venue is proper in the United States District Court for the Northern  
18 District of California pursuant to 18 *U.S.C.* 1391(b) and 18 *U.S.C.* § 1441(a)  
19 because Defendant does business within the state of California and Plaintiff  
20 resides within this District.

### 21 **PARTIES**

22 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC.  
23 (“Plaintiff”), is a corporation of the State of California, whose principal place of  
24 business is in the county of Alameda and is a “person” as defined by 47 *U.S.C.* §  
25 153 (39).

26 5. Defendant, KY INSURANCE SERVICES, LLC (“Defendant” or  
27 “DEFENDANT”), is an insurance brokerage company, and is a “person” as  
28 defined by 47 *U.S.C.* § 153 (39).

1           6.     The above named Defendant, and its subsidiaries and agents, are  
2 collectively referred to as “Defendants.” The true names and capacities of the  
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
5 names. Each of the Defendants designated herein as a DOE is legally responsible  
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend  
7 the Complaint to reflect the true names and capacities of the DOE Defendants  
8 when such identities become known.

9           7.     Plaintiff is informed and believes that at all relevant times, each and  
10 every Defendant was acting as an agent and/or employee of each of the other  
11 Defendants and was acting within the course and scope of said agency and/or  
12 employment with the full knowledge and consent of each of the other Defendants.  
13 Plaintiff is informed and believes that each of the acts and/or omissions  
14 complained of herein was made known to, and ratified by, each of the other  
15 Defendants.

### 16                           **FACTUAL ALLEGATIONS**

17           8.     Beginning in or around February 2015, Defendant contacted Plaintiff  
18 on Plaintiff’s cellular telephone ending in -1636, in an effort to sell or solicit its  
19 services. Defendant called, including but not limited to around February 13, 2015  
20 at 4:49 p.m. Defendant called from telephone numbers including, but not limited  
21 to (562) 473-4086.

22           9.     Defendant used an “automatic telephone dialing system”, as defined  
23 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to sell or solicit its  
24 business services.

25           10.    Defendant’s calls constituted calls that were not for emergency  
26 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

27           11.    Defendant’s calls were placed to telephone number assigned to a  
28 cellular telephone service for which Plaintiff incurs a charge for incoming calls

1 pursuant to 47 U.S.C. § 227(b)(1).

2 12. Plaintiff is not a customer of Defendant's services and has never  
3 provided any personal information, including his cellular telephone number, to  
4 Defendant for any purpose whatsoever. In addition, on at least one occasion,  
5 Plaintiff answered the telephone and told Defendant to stop calling. Accordingly,  
6 Defendant never received Plaintiff's "prior express consent" to receive calls using  
7 an automatic telephone dialing system or an artificial or prerecorded voice on her  
8 cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

9 **CLASS ALLEGATIONS**

10 13. Plaintiff brings this action individually and on behalf of all others  
11 similarly situated, as a member of the proposed class (hereafter "The Class")  
12 defined as follows:

13 All persons within the United States who received any  
14 telephone calls from Defendant to said person's cellular  
15 telephone made through the use of any automatic  
16 telephone dialing system or an artificial or prerecorded  
17 voice and such person had not previously consented to  
18 receiving such calls within the four years prior to the  
19 filing of this Complaint

20 14. Plaintiff represents, and is a member of, The Class, consisting of all  
21 persons within the United States who received any telephone calls from  
22 Defendant to said person's cellular telephone made through the use of any  
23 automatic telephone dialing system or an artificial or prerecorded voice and such  
24 person had not previously not provided their cellular telephone number to  
25 Defendant within the four years prior to the filing of this Complaint.

26 15. Defendant, its employees and agents are excluded from The Class.  
27 Plaintiff does not know the number of members in The Class, but believes the  
28 Class members number in the thousands, if not more. Thus, this matter should be

1 certified as a Class Action to assist in the expeditious litigation of the matter.

2 16. The Class is so numerous that the individual joinder of all of its  
3 members is impractical. While the exact number and identities of The Class  
4 members are unknown to Plaintiff at this time and can only be ascertained  
5 through appropriate discovery, Plaintiff is informed and believes and thereon  
6 alleges that The Class includes thousands of members. Plaintiff alleges that The  
7 Class members may be ascertained by the records maintained by Defendant.

8 17. Plaintiff and members of The Class were harmed by the acts of  
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
10 and Class members via their cellular telephones thereby causing Plaintiff and  
11 Class members to incur certain charges or reduced telephone time for which  
12 Plaintiff and Class members had previously paid by having to retrieve or  
13 administer messages left by Defendant during those illegal calls, and invading the  
14 privacy of said Plaintiff and Class members.

15 18. Common questions of fact and law exist as to all members of The  
16 Class which predominate over any questions affecting only individual members  
17 of The Class. These common legal and factual questions, which do not vary  
18 between Class members, and which may be determined without reference to the  
19 individual circumstances of any Class members, include, but are not limited to,  
20 the following:

- 21 a. Whether, within the four years prior to the filing of this Complaint,  
22 Defendant made any call (other than a call made for emergency  
23 purposes or made with the prior express consent of the called party)  
24 to a Class member using any automatic telephone dialing system or  
25 any artificial or prerecorded voice to any telephone number assigned  
26 to a cellular telephone service;
- 27 b. Whether Plaintiff and the Class members were damages thereby, and  
28 the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such  
conduct in the future.

1  
2 19. As a person that received numerous calls from Defendant using an  
3 automatic telephone dialing system or an artificial or prerecorded voice, without  
4 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of  
5 The Class.

6 20. Plaintiff will fairly and adequately protect the interests of the  
7 members of The Class. Plaintiff has retained attorneys experienced in the  
8 prosecution of class actions.

9 21. A class action is superior to other available methods of fair and  
10 efficient adjudication of this controversy, since individual litigation of the claims  
11 of all Class members is impracticable. Even if every Class member could afford  
12 individual litigation, the court system could not. It would be unduly burdensome  
13 to the courts in which individual litigation of numerous issues would proceed.  
14 Individualized litigation would also present the potential for varying, inconsistent,  
15 or contradictory judgments and would magnify the delay and expense to all  
16 parties and to the court system resulting from multiple trials of the same complex  
17 factual issues. By contrast, the conduct of this action as a class action presents  
18 fewer management difficulties, conserves the resources of the parties and of the  
19 court system, and protects the rights of each Class member.

20 22. The prosecution of separate actions by individual Class members  
21 would create a risk of adjudications with respect to them that would, as a practical  
22 matter, be dispositive of the interests of the other Class members not parties to  
23 such adjudications or that would substantially impair or impede the ability of such  
24 non-party Class members to protect their interests.

25 23. Defendant has acted or refused to act in respects generally applicable  
26 to The Class, thereby making appropriate final and injunctive relief with regard to  
27 the members of the California Class as a whole.  
28

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

26. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B);
- An order for injunctive relief prohibiting such conduct by Defendants in the future; and
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C);
- An order for injunctive relief prohibiting such conduct by Defendants in the future; and
- Any and all other relief that the Court deems just and proper.

Respectfully submitted this 14<sup>th</sup> day of December, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff